

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2021-130-S**

IN RE: Joint Application for Approval of the	)	
Sale of Assets and Transfer of Facilities,	)	
Territory and Certificate of Public	)	<b>MOTION TO STRIKE</b>
Convenience and Necessity from Synergy	)	
Utilities, L.P. to South Carolina Water	)	
Utilities, Inc.	)	

Joint Applicants, Synergy Utilities, L.P. and South Carolina Water Utilities, Inc. (“Joint Applicants”), reserving all arguments and positions heretofore made with regard to the subject matter hereof, hereby move the South Carolina Public Service Commission (“Commission”) for an order striking portions of the surrebuttal testimony and exhibits of the Office of Regulatory Staff (“ORS”) witness Dawn Hipp. This motion is made pursuant to S.C. Code Regs. 103-829 and is based upon, *inter alia*, S.C. Code Regs. 103-829, 103-846, and 103-849, and applicable provisions of the South Carolina Rules of Civil Procedure (“SCRCP”) and the South Carolina Rules of Evidence (“SCRE”). In support thereof, the Joint Applicants would respectfully show unto the Commission as follows.

In response to the thirteen pages of rebuttal testimony submitted by the Joint Applicants, the ORS filed and served ninety-six pages of surrebuttal testimony and exhibits. Included with ORS’s surrebuttal testimony are discovery responses and reports from third parties who are neither parties to this docket nor witnesses. The Joint Applicants move to strike all discovery responses not supportive of the ORS surrebuttal testimony as irrelevant and improper for surrebuttal testimony. The Joint Applicants also move to strike the reports as hearsay.

The opportunity to file surrebuttal evidence is discretionary with the Commission. *Palmetto Alliance, Inc. v. South Carolina Public Service Commission*, 282 S.C. 430, 439, 319 S.E.2d 695,700 (1984). Typically, the applicant, petitioner or plaintiff has the burden of proof and due process requires that the moving party have the opportunity to respond to the testimony and evidence of the respondent. Only at the Commission, does the respondent get the last word. Having been granted this extraordinary right, the respondent should not be permitted to sandbag the applicant by introducing evidence not responsive to issues raised in rebuttal or by introducing new evidence. To do so would deprive Joint Applicants of the opportunity to respond and due process of law. Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 107-08, 708 S.E.2d 755, 761 (2011).

**Discovery Responses.** The ORS witness cites the following discovery responses in support of her surrebuttal testimony: AIR 1-14, 1-15, 1-20, 1-21,1-37, 1-45, 1.51, 2.6, 2.7 and 2.8. (See pages 8, 9, 11, 15, 18, 19 and 29 of Exhibit DMH 1). However, instead of attaching only the cited discovery responses, the surrebuttal testimony includes twenty-four additional pages of irrelevant discovery responses. Admitting these responses would deprive the Joint Applicants of the opportunity to respond to inadmissible, incompetent, cumulative and/or irrelevant evidence. Those discovery responses which are not relevant to ORS's surrebuttal testimony should be stricken from the record.<sup>1</sup> S.C. Code Ann. Reg. 103-849 A.

ORS cited the following discovery responses in its testimony:

- Joint Applicants Response to ORS AIR 1-14, 1-15, 1-21, 1-37, 1-45 and 2-8. *See* Surrebuttal Exhibit DMH-1. Surrebuttal, p. 6, n. 6.
- Joint Applicants Response to ORS AIR 1-51.c. Surrebuttal, p. 8, n. 9.
- Joint Applicants Response to ORS AIR 1-20, 2-6 and 2-7, p. 9, n. 11.

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<sup>1</sup> Pages 1-7, 10, 12 – 14, 16 – 17, 20 – 24, 25 – 28, and 31 -32 of DMH 1 should be stricken.

Reserving all rights to object to any inadmissible, incompetent, cumulative and/or irrelevant evidence at trial, a copy of the discovery responses with all but the cited responses redacted is attached as Exhibit A, and the Joint Applicants request the Commission order it substituted for the relevant part of Exhibit DMH-1.

**AECOM Report.** The ORS surrebuttal attempts to introduce a report from AECOM prepared for the County of Orangeburg, South Carolina evaluating the Northwoods system. (See pages 33 – 84 of Exhibit DMH 1). The report was prepared by or for two organizations that are not parties to the litigation, and was not prepared for the ORS. The ORS witness is not an engineer and is not qualified to testify to the substance of the report. SCRE Rules 601 and 901(a)(1). Moreover, the report is hearsay and inadmissible. SCRE Rule 802. Admitting the report would prejudice the Joint Applicant who would be denied the opportunity to cross-examine its author.<sup>2</sup> Moreover, the AECOM report should be excluded because any probative value is outweighed by the danger of unfair prejudice, confusion of the issues and will prove misleading. SCRE Rule 403. Not only should the AECOM report be stricken, but the ORS surrebuttal testimony addressing the report, at Page 3, lines 5 – 8, should also be stricken.

**HPG Report.** The ORS surrebuttal attempts to introduce a report by HPG and Company pertaining to Northwoods sanitary sewer system improvement (See Page 85 of Exhibit DMH 1). One can only speculate as to the purpose of the document. The ORS fails to provide the Commission any context for the one-page document.<sup>3</sup> As stated, the ORS witness is not an engineer and is incompetent

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<sup>2</sup> "The right to cross examine witnesses in quasi-judicial or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision, as a requirement of due process of law or the right to a hearing, and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization therefor." Spartanburg v. Parris, 251 S.C. 187, 191, 161 S.E.2d 228, 229 (1968) *citing* 2 Am. Jur. 234, Administrative Law, Sec. 424.

<sup>3</sup> Because the ORS was in possession of the one-page document, it may be inferred that it is aware of the context in which the report was prepared but has determined that the report will prove more prejudicial to the Joint Applicants without a full explanation of the context in which it was prepared.

to introduce the report. SCRE Rules 601, 901(a)(1). In addition, the document is hearsay and inadmissible. SCRE Section 802. Even though the report was prepared for Synergy, it does not constitute an admission by a party opponent. See SCRE Rule 801(d)(2). Not only should the HPG report be stricken, but the ORS surrebuttal testimony addressing the report at Page 3, lines 8 – 10 should be stricken.

**WHEREFORE**, having fully set forth its motion, the Joint Applicants pray that the Commission grant their Motion to Strike and for such other and further relief as the Commission deems just and lawful.

Respectfully submitted, this the 13th day of September 2021.




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Scott Elliott, Esquire  
ELLIOTT & ELLIOTT, P.A.  
1508 Lady Street  
Columbia, SC 29201  
Telephone: 803-771-0555; Fax: 803-771-8010  
[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

Charles L. A. Terreni, Esquire  
1508 Lady Street  
Columbia, SC 29201  
Telephone: 803-771-7228; Fax: 803-771-8778  
[charles.terreni@terrenilaw.com](mailto:charles.terreni@terrenilaw.com)

*Attorneys for Joint Applicants*